

Application No.10/829,356  
Amendment dated November 6, 2007  
Response to Office Action dated October 19, 2007

**Remarks:**

In view of the foregoing amendments and these remarks, it is submitted that the objections raised in the October 19, 2007 office action have been overcome.

In the October 19, 2007 office action, the Examiner objected to claim 18 as not showing the previous language of the claim. Claim 18 has now been amended to show the previous and now cancelled text of this claim.

The following remarks repeat the Applicant's remarks filed August 1, 2007.

Applicant wishes to thank the Examiner and his supervisor for the courtesy extended to the Applicant's agent during the telephone interview of July 31, 2007. During the interview, Applicant's agent discussed the substance of the foregoing amendments and remarks. The Examiner agreed that Westra does not teach a longitudinal stud.

***Claim Amendments***

Claims 1-9 and 18-20 have been amended. Claims 10-17 have been withdrawn without prejudice. Accordingly, claims 1-9 and 18-20 are pending herein.

Initially, Applicant has amended claim 1 to more clearly define the meaning of a "stud" as a "longitudinal stud for use with a concrete wall for supporting and retaining curable foam insulation adjacent the concrete wall, the stud comprising a longitudinal member having a length dimension greater than a width and depth dimension".

In reviewing the dictionary definition of a stud, it is noted that a number of definitions exist for a "stud". In the context of this invention, the meaning of a "stud" is not intended to capture those structures having "button-like" or other "knob-like" structures as is another common definition of this word. Rather, the intention of the claims is only to capture those structures falling within the general "construction industry" definition of a stud, namely "any of a number of slender, upright members of wood, steel, etc., forming the frame of a wall or partition and covered with plasterwork, siding, etc.". Applicant does not intend that this definition be the literal scope of interpretation of "stud".

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In addition, the claim has been amended to limit the claim such that the anchoring system includes at least two anchors for securing the longitudinal stud to at least two form ties as well as to define the use of the claim as supporting curable foam insulation.

In view of the specification as a whole including the drawings, the application is clearly directed to "studs" so described. Accordingly, it is submitted that no new subject matter has been added to the application that is not reasonably inferable from the application as originally filed.

Claims 2-10 and 18-20 have been amended to maintain consistency of language in view of the amendments to claim 1.

### ***35 USC § 112 Rejections***

In the office action, the Examiner specifically rejected claims 5, 8 and 20 for clarity for the use of particular language. These claims have been specifically amended to address these rejections. Claim 5 has been amended to specifically refer to a "form tie receptacle". Claim 8 has been amended to refer to "first and second flanges" and claim 20 has been amended to refer to a "corner stud".

In view of these amendments, it is believed that all rejections under 35 USC § 112 have been overcome.

### ***35 USC § 102 Rejections***

The Examiner has rejected claims 1-4, 6, 9 and 18 under 35 USC 102(b) as anticipated by Westra (US 6,434,902). In view of the foregoing amendments and the following comments, it is submitted that these rejections have been overcome.

Westra is not directed to a "stud" as defined within the subject application and claims, namely a longitudinal member that may be placed along the surface of a concrete wall. Rather, using the description of Westra, Westra discloses a "cap" having dimensions of approximately 2" x 2". The Westra cap is intended to hold light-weight previously-hardened insulation on a concrete wall.

In comparison, the subject application is a longitudinal stud that may be connected to at least one form-tie protruding from a concrete wall. In North America, aluminium form panels, for example,

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which may be used with the invention, are typically 24"-36" wide and 8' to 9' high normally including one of two common form tie patterns.

The form ties may follow an 8-8 pattern located on the side rails at 8" from the top and bottom and at 8" intervals in between. Not all tie locations are used on every wall. Ties are located closer together at the bottom because of the pressure of the concrete at the bottom being greater.

As shown in Figures 1B, 2 and 3 of the subject application, the present stud attaches to form ties vertically at a number of form ties that provide an attachment surface from the bottom of the wall to the top in the same way that a wood stud would provide an attachment surface for drywall, wood sheathing, siding or stucco.

The stud may be used to support curable foam insulation (often referred to as "Sprayed in Place Polyurethane Foam" (SPF) to the concrete wall. In contrast, Westra is designed to be used with rigid foam panels.

In the subject system, when the curable foam insulation is sprayed onto the wall, the foam passes through the web into the adjacent cavity space, where upon curing, will contribute to the strength of the stud. The stud will also provide a visual depth indicator for the spray foam applicator such that a uniform and consistent depth of foam is applied to the wall.

Once the foam has cured it can be readily trimmed to the same plane as the stud as may be required. The stud thus provides a continuous anchoring surface from the bottom to the top of the wall vertically and at intervals horizontally to meet siding, sheathing and stucco specifications.

Further still, the web members use less plastic than a solid stud to achieve the desired strength which reduces the cost of the stud. In addition, the web design of the present system reduces heat loss that would otherwise occur through a wall as the insulation is unbroken through the stud.

Plumbing and electrical components can also easily be routed and supported through the web members without additional attachment mechanisms required.

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In summary, the subject system provides numerous advantages over all prior art systems by an innovative design that solves a problem not considered by any prior art reference. With specific reference to Westra, it is noted that Westra fails to disclose a stud as defined by the claims and specifically fails to disclose a longitudinal member having a web structure for supporting curable foam insulation.

In view of the foregoing amendments to claim 1 and remarks, it is believed that claim 1 is in a condition for allowance and that the dependent claims 2-9 and 18-20 are similarly allowable.

### ***35 USC § 103 Rejections***

The Examiner has rejected claims 1 and 4-5 as obvious in view of Westra. As discussed above, Westra does not consider or address the same problems as described and claimed by the subject application, namely a longitudinal stud system for supporting curable foam insulation against a concrete wall surface.

Westra does not therefore, fairly suggest the structure defined by claim 1, as amended, namely the longitudinal structure and lateral web. Accordingly, it is respectfully submitted that there is no teaching, suggestion or motivation found within Westra to modify the Westra structure to arrive at the presently claimed structure defined by claim 1 to enable the Westra structure to be used with curable foam insulation.

Accordingly, it is believed that all objections raised under 35 USC § 103 are overcome. However, for completeness, Applicant offers the following comments with respect to the remaining references.

#### **Bowden (US 3,452,960)**

Bowden is directed to an industrial concrete form structure and in no way considers or addresses the issues of supporting curable foam insulation on already formed concrete walls. This reference only describes a system of concrete forms.

#### **Silverman (US 6,243,999)**

Silverman is directed to a window structure and in no way considers or addresses the issues of supporting curable foam insulation around a window opening. The flange 24 of Silverman is for

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securing the window frame to a building wherein the flange is flush against the building. It is not intended as a barrier for curable foam insulation that projects from the building to provide a barrier.

**Koenig Jr.'s (US Patent 5,477,643)**

Koenig Jr. is directed to a drywall trim system with a tear away strip to mask the trim so that paint and plaster don't damage the trim. Koenig Jr. in no way addresses the issue of supporting curable foam insulation around a corner on a concrete wall.

The remaining prior art references have been reviewed and a similar conclusion is made with respect to these references.

In summary, it is respectfully submitted that none of the prior art reasonably teach or suggest the unique combination of elements as presently claimed that provide an effective solution to the problem of effectively applying and supporting curable-foam insulation on a concrete wall.

The case is therefore believed to be in a condition for allowance.

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Respectfully submitted,



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